

Improving Justice Responses for Victims of Intimate Partner Violence: Examining the Merits of the Provision of Independent Legal Representation

Abstract

Justice processes have long been criticised for their inability to meet the needs of intimate partner violence victims and provide remedies that facilitate recovery. Despite a bevy of victim-oriented reforms, victims continue to report dissatisfaction in their engagement with the legal process. Recognising the failures of policy responses to date, the Royal Commission into Family Violence (2016) in Victoria, Australia, sought to reimagine justice responses to victims of intimate partner violence through innovative models of reform, such as the introduction of legal representation for victims in court. In the absence of prescribed detail as to how this could be achieved, this article contends that there is a need to tread cautiously in this space. It sets out the potential benefits from trialling legal representation for victims in emerging Victorian specialist family violence courts, as well as the perceived risks that should be kept in mind prior to instituting state wide reform.

Key words: intimate partner violence, victims, independent legal representation, specialist family violence courts, Royal Commission into Family Violence.

Introduction

In 2015, the state of Victoria (Australia) established the first Royal Commission into Family Violence (henceforth, RCFV) in Australia in order to address the gravity and impacts of family violence related offending and to make whole of system recommendations to improve prevention and responses. The RCFV final report (2016) set out a roadmap for transformative reform, containing 227 recommendations, the majority of which were to be implemented within five years of the report's release. The recommendations aimed to reduce the perpetration of, and victimisation resulting from, family violence, with a strong focus on improving responses to victims within and beyond the justice system. The Victorian state government committed to implementing all 227 recommendations.

In the context of intimate partner violence (IPV) specifically, the critiques levelled at justice processes are well documented and point to a bevy of procedural challenges experienced by victims (see, *inter alia*, Walklate, Fitz-Gibbon & McCulloch, 2018). Challenges range from victims experiencing insensitive treatment or inaction by the police (Goodman-Delahunty & Crehan, 2015; Jordan, 2004), to the inadequate provision of timely information, and fearing the legal process and trial, during which victims can be subjected to character attacks and distressing cross-examination (Kaye, Wangmann & Booth, 2017; Lees, 1996). Research in Australia and internationally has long documented the many ways in which engagement with legal processes can lead to secondary victimisation, whereby “the psychological impact of victimisation can be considerably exacerbated” (Doak, 2008, p. 51), causing victims of IPV in particular to be reluctant to report abuse (Segrave, Wilson & Fitz-Gibbon, 2018).

Building on these critiques, the RCFV (2016, p. 4) set out a number of recommendations which sought to ensure that “services and systems will be attentive to, and respectful of, the diverse experiences and needs of victims”, and will take into account the failures to date around policy responses which have been criticised for being “insufficient” in providing victims with accessible justice remedies and facilitating recovery (RCFV, 2016, p. 1). To this end, the RCFV (2016) considered ways to enhance victims’ procedural justice experiences, including contentious proposals of reform, which have traditionally been resisted in adversarial frameworks.

Amidst the 227 recommendations made by the RCFV (2016, p. 62), Recommendation 60 included the need to provide all Magistrates’ Court of Victoria (henceforth, MCV) headquarter courts and specialist family violence division courts with “facilities for access to specialist family violence service providers and legal representation for applicants and respondents”. As a division of the MCV, specialist family violence courts exercise jurisdiction over civil matters, including family violence intervention orders (FVIO), and breaches of those, which amount to criminal proceedings. While there is already scope for victims to engage legal counsel for assistance with negotiating civil processes associated with contested apprehended FVIOs, the provision of independent legal representation (henceforth, ILR) for victims of IPV within dedicated family violence court divisions is a new suggestion.

In contrast to other detailed recommendations, the RCFV did not provide guidance on the proposed form of ILR or the context in which it could conceivably operate, however it flagged the imperative to “make the court experience safer and more accessible” for IPV victims (RCFV, 2016, p. 118). In light of the Victorian government’s expressed commitment to implement all RCFV recommendations, and

in the absence of prescribed detail on how Recommendation 60 should be achieved in practice, there is a need to explore the possibilities it may lend itself to, as well as the potential benefits and risks associated with such reform. This article directly addresses these issues.

To do so, this article draws upon comparative adversarial experiences to examine whether, and indeed how, the implementation of Recommendation 60 could be achieved in Victoria as well as in other Australian and international jurisdictions contemplating like reform. The analysis proceeds in four parts. Part one traces the movement towards increased consideration and involvement of victims in adversarial systems, taking note of the disjuncture between the interests of victims and those of adversarial legal processes. In part two, we examine the work of the RCFV (2016) and its critique of existing justice system policies and support procedures for victims of IPV. Focusing specifically on Recommendation 60, we also critically examine the needs of victims of IPV during court processes and the extent to which ILR can address these needs. We then turn to comparative models of reform and consider the possibilities for how ILR for victims of IPV could be achieved in the Victorian context. In the final section, we provide a caution as to the unintended consequences of this recommendation and the potential risks it might pose for victims of IPV and to the integrity of adversarial justice processes more broadly. The article concludes that there is a need to tread cautiously in this space, setting out the benefits to be gained from trialling ILR for victims in emerging Victorian specialist family violence courts prior to instituting state wide reform.

The movement towards increased consideration and involvement of victims in adversarial legal systems

Gendered violence has emerged as a significant 21st century concern, occupying the forefront of legal commentary on international and national policy agendas. Feminist activists, combined with the efforts of victims' rights groups, have long challenged the social, legal and political contexts governing responses to victims of gendered crime, particularly those that "privileged an idealised version of a victim – the vulnerable, elderly, victim of vicious assaults or attacks by strangers" (Booth & Carrington, 2018, p. 294). These movements also gave rise to social and penal policies that shifted the status of the victim from "outsider *par excellence*" (Ryan, 2003, p. 68) to the "centre of contemporary discourse" (Garland, 2001, p. 11). At the same time, these movements led to different trajectories in the debates around victims' rights in light of the "disjuncture between the concerns and interests of victims of domestic and family violence on the one hand and those of adversarial legal processes on the other" (Booth, Kaye & Wangmann, 2019, *forthcoming*).

In Australia, victim recognition and related reform preceded the United Nations 1985 *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. Victim-focused reforms were introduced in conjunction with administrative changes to procedures and services, and these applied to IPV victims as well as victims of crime more generally (Daly, 2011). This included, for example, the establishment of victim support services to assist victims to negotiate legal processes, as well as training police in how to respond to IPV incidents and provide assistance to victims throughout proceedings (Daly, 2011; for developments specific to Victoria Police, see Segrave et al., 2018). The development of declarations or charters of victims' rights across Australia's eight state and territory jurisdictions also represented a symbolic

recognition of the harm or loss experienced by victims and outlined key principles governing responses to victims by justice authorities, including access to information about support, protection and the legal process (Booth & Carrington, 2018).

In addition to changes to the legal definition of rape in the mid 1970s, further reforms focused on restricting the admissibility of evidence on a victim's sexual history and disclosure of medical and counselling records, and allowing victims to give evidence via video technology or while accompanied by a support person (Australian Law Reform Commission [henceforth, ALRC], 2010; Daly, 2011 Braun, 2014). Other post-assault measures for IPV victims in Australia include Domestic Violence Liaison Officers and specialist domestic violence courts, which Booth and Carrington (2018, p. 296) identify as “absolutely necessary to mitigate the effects of violence”.

Such changes have accordingly “motivated positive social responses and legal reforms, such as rape crisis centres and the recognition of previously unacknowledged offences as ‘real’ crimes, for example, domestic and family violence, and rape in marriage” (Flynn, 2012, p. 72). However, despite this range of legal reforms, it has been noted in Australia, and indeed internationally, that the cumulative effect of victim-oriented reform has not significantly altered the “landscape of police and criminal justice responses”, nor has it necessarily improved victims' experiences in legal processes (Daly, 2011, p. 3; see also Koss, 2006).

Recognising the failures of legal responses for IPV victims to date, the RCFV listed ILR for FVIO applicants as one of the required components of a specialist family violence court division moving forward. The multi-jurisdictional approach of Victorian specialist family violence courts enables them to deal with different domains of legal practice, including civil court processes associated with FVIO

applications and criminal proceedings related to FVIO contraventions. The rationale underpinning this multifaceted approach is to minimise duplication of proceedings and inconsistent orders and outcomes (RCFV, 2016; MCV, 2015). The ability for IPV victims to be legally represented within specialist family violence courts may therefore provide an opportunity for victims' needs to be met, or at the very least, considered.

Notwithstanding the possible therapeutic effects of victim participation for IPV victims (see, for example, McGlynn, Downes & Westmarland, 2017), the recommended provision for ILR to victims arguably provides an obstacle to legal reform when considering that “victims are conceptualised and constructed differently” across different legal domains, including civil and criminal justice proceedings (Booth, Kaye & Wangmann, 2019, *forthcoming*). In the first instance, victims are considered applicants with authority to engage representation for FVIO applications, and in the second, victims are considered complainants whose role is limited to that of “an instrumental one as a witness for the Crown” (Booth & Carrington, 2018, p. 293). As a result, this can affect how victims are positioned, as well as “how their claims are conceptualised and understood in that doctrinal area” (Booth, Kaye & Wangmann, 2019, *forthcoming*). This highlights the need to consider whether there is a need for additional (and arguably contentious) models of reform, such as the provision of ILR, in order to improve justice responses to victims of IPV within specialist family violence courts.

Is there a need for Recommendation 60? Reviewing the adequacy of existing justice policies and support procedures for victims of IPV

At the time that the RCFV reported, there were two specialist family violence court divisions in Victoria, which offered additional supports to improve responses in family violence matters, including trained family violence registrars, applicant support workers, co-located legal and non-legal support services, dedicated police prosecutors and family violence training for magistrates and court staff (RCFV, 2016, vol. III, p. 120). In line with the RCFV recommendations, the roll out of additional specialist family violence courts state-wide will ensure that “one court is able to provide continuity in the matters and improve the responses to and experiences of ... [victims] with complex needs” (MCV, 2015, p. 5).

Noting that court processes can be “intimidating, confusing and unsafe” (RCFV, 2016, vol. III, p. 117), the RCFV documented the ways in which the system operates to heighten the anxiety and uncertainty experienced by victims, which can serve to undermine their claims of victim status, and be a site of further harm. The Commission’s findings, while not new, lend further support to over a decade of research that has critically analysed the ways in which women’s experiences of IPV have been excused, minimised, silenced and ‘othered’ by traditional court processes (see, *inter alia*, Goodmark, 2018; Hudson, 2006; Walklate, 2008). Where the RCFV work is particularly helpful in advancing these debates is in its identification of the civil court processes associated with applying for FVIOs as a site of heightened difficulty. The RCFV (2016, vol. III, p. 121) found that at this point of the court process, victims often lack support and such difficulties are likely to be further exacerbated for victims from culturally and linguistically diverse backgrounds, Aboriginal and Torres Strait Islander communities, and for people with a disability.

Interestingly, and of specific relevance to this article's focus, evidence presented to the RCFV (2016, vol. III, p. 143) suggested that ILR, where provided to applicants during FVIO contests proceedings, served to "alleviate the burden" experienced by victims. The Commission drew on evidence provided by community legal centres and academic research to illustrate the ways in which the provision of ILR to FVIO applicants served to improve participation, minimise safety concerns, as well as validate their experience of violence and its impact on their lives (see also George & Harris, 2014). Reflecting this body of evidence, the recommended provision of ILR to IPV applicants is specifically linked by the RCFV in Recommendation 60 to the state-wide roll out of specialist magistrate court responses in all family violence matters.

The provision of ILR to IPV victims during FVIO contests hearings can protect victims' discrete interests and vulnerabilities, particularly where the defence argue the onus is on applicants to satisfy the balance of probabilities that family violence has occurred and they are at risk of further harm. In these instances, a respondent's legal representative has the ability to cross-examine the victim to test the veracity of their claims through potentially misleading and offensive questioning. Indeed, it has been found that some victims deliberately avoid seeking FVIOs due to the possibility of having their application contested and being cross-examined, in what may amount to "another form of psychological abuse" (Submission FV 192 cited in ALRC, 2010, p. 862).

The very nature of this practice, as noted by Booth, Kaye and Wangmann (2019, *forthcoming*) mirrors the fact-finding tradition inherent to adversarial criminal trials, where defence counsel conduct "intense and probing interrogation" of the complainant to elicit probative evidence that will counteract their claims (Henderson,

2015, p. 90). Evidence presented by the ALRC (2010, p. 862) found that while the cross-examination of vulnerable witnesses in sexual offence trials is widely recognised as problematic, FVIO contests hearings “are no different in the relevant dynamics” and may involve questioning that draws upon sexual history or private communications, making such court processes – criminal and civil – directly comparable. On this backdrop, it is perhaps unsurprising that Booth, Kaye and Wangmann (2019, *forthcoming*) describe the courtroom as “an extension of the violence” endured by victims of IPV, making calls for ILR especially justified within the context of Victorian specialist family violence courts.

Although cross-examination is regarded as a fundamental fair trial right within adversarial systems, the law in Australia has imposed limits on its conduct. In the short time since the release of the RCFV recommendations, at the federal level, legislation has been introduced to prevent self-represented litigants in family law matters from cross-examining their victims (Doran, 2018). This is a significant reform in terms of improving court processes for IPV victims. Prior to the introduction of this legislation, in the Federal family law system, cross-examination of a person by their alleged family violence abuser was permitted in some cases (Carson, Qu, Malo & Roopani, 2018) – the effect of which is well captured by Kaye, Wangmann and Booth (2017, p. 94) who note that this process can be traumatising and intimidating, lead to unsafe consent orders, and limit the quality of evidence provided to the court.

Victoria and other state jurisdictions have recently introduced reform to ensure that victims in FVIO contests hearings and criminal proceedings arising out of family violence can avoid this occurring with such protections now being afforded in the Federal family law courts (Carson et al., 2018). However, even with this new federal

legislation in place, much of the acknowledged difficulties of criminal and civil court processes for victims of IPV remain, particularly for those applying for and participating in contested proceedings for, a FVIO. At this point specifically, there is an argument to be made that IPV victims would benefit from the provision of ILR and that this may address some of the barriers to justice and re-victimisation that this category of victims experience in their engagement with the court system.

In circumstances where FVIOs are breached, the respondent can be charged with a criminal offence and the victim-applicant has no representation. Bearing in mind the challenges associated with criminal prosecution processes, the RCFV recommended that both applicants and respondents be supported in specialist family violence courts in “FVIO proceedings as well as FVIO contraventions” (RCFV, 2016, p. 159). Indeed, ILR for IPV victims throughout preliminary criminal hearings may help to ensure that victims feel supported and that their privacy is protected in instances where the defence counsel seek to adduce disclosure of the victim’s medical or counselling records and prior sexual history as evidence to be used against the victim in court (see Iliadis, 2019). The implementation of this suggestion could also help to reduce the trauma experienced by women routinely re-victimised in court by the very person from whom they are seeking protection.

To this end, the provision of ILR may enable victims to regain a sense of autonomy, safety and control during legal processes often experienced by women as daunting and uncomfortable. It could also help to protect the quality and integrity of victims’ evidence and ensure that “increased attention [is provided] to victims’ rights by police officers, prosecutors, magistrates and judges – and defence counsel” (O’Connell, 2012, p. 10). Research conducted by the Canadian Crown counsel (cited in Mohr,

2002, p. 16–17) found that “everyone takes it more seriously” where there is victim ILR involved.

Furthermore, a key limitation of court responses to IPV victims has been the lack of voice afforded to the victim. Given that the needs of the victim do not always correspond with the interests of the state, the provision of ILR for IPV victims may provide a dedicated avenue for their voices to be heard and views expressed during court processes. This is particularly so in the context of FVIO applications made by police on behalf of the victim. Section 75 of the *Family Violence Protection Act 2008* (Vic) gives police the power to negotiate and settle conditions on a final order “even if the affected family member has not consented to the making of the application”. This may lead to unsafe consent orders and exacerbate the victim’s fear, particularly where the respondent consents to the conditions of the order without making admissions on the nature of the offending behaviour as described by the applicant. A further consideration of police applying for FVIOs on behalf of a victim arises when police may have limited capacity to inform a victim on related legal issues, for example, family law matters (RCFV, 2016, p. 160). According to the RCFV (2016, p. 160), this “underscore[s] the need for the affected family member to have independent legal representation, even in police-initiated intervention order proceedings”. Acknowledging the potential of this specific section of Recommendation 60, we now turn our attention to comparative models of reform in considering whether, and indeed how, the provision of ILR to victims of IPV could be achieved within the Victorian magistrates’ court structure.

Comparative models of reform

Victoria's legal system can be likened to other adversarial jurisdictions where victims are not typically granted rights to ILR. In recent years, however, increased attention has been afforded to examining the ways in which victims can assume a more active role in justice processes (Braun, 2014, 2019; Kirchengast, 2013; Kirchengast, Iliadis & O'Connell, 2019). As recognised by the RCFV (2016), this has included considering the means by which to grant victims the right to be legally represented during civil and criminal court processes associated with FVIOs. Other Australian inquiries, including the Victorian Law Reform Commission's (VLRC, 2016) report into *The Role of Victims of Crime in the Criminal Trial* and the Royal Commission into Institutional Responses to Child Sexual Abuse (2017), have also recently considered how victims' rights can emerge as justiciable ones, which would enhance IPV victims' standing and access to justice.

In contrast to most inquisitorial systems, the right to victim ILR within an adversarial context remains a highly charged issue, although its use is not unprecedented and there is increasing recognition of IPV victims' needs within transnational directives. For example, the Council of Europe's Istanbul Convention on *Preventing and Combating Violence Against Women and Domestic Violence* requires "measures ... be adopted to protect the privacy [of victims]" (Article 56(1)(f), including "protection ... from intimidation, retaliation and repeat victimisation" (Article 56(1)(a)). It also requires member States to enact legislative changes to enable victims "to be heard, to supply evidence and have their views, needs and concerns presented, directly or through an intermediary, and considered" (Article 56(1)(d)).

Pursuant to this transnational directive, some adversarial jurisdictions have moved contentiously towards granting victims representation rights throughout preliminary criminal proceedings. For example, the Republic of Ireland allows sexual offence complainants to access state-funded legal counsel to oppose a defendant's application for the introduction of their sexual history evidence in court (s 34 *Sex Offenders Act 2001* (IRE)).¹ Iliadis (2019) found that this form of ILR has strong potential to contribute positively to victims' procedural justice needs during preliminary court proceedings, enabling victims to feel an attainment of information, voice, validation, and control. However, her study also emphasised the regrettable irony of the reform, which revealed that a high volume of defence applications to adduce victims' sexual history were being granted even with the ILR in place, suggesting that there is minimal preclusion of victims' sexual history evidence in practice (Iliadis, 2019, p. 13). Iliadis (2019) therefore argues that this legislation is not infallible in protecting victims' privacy, rights and interests. To this end, while the ILR available to victims in Ireland may provide a comparative model for the recommended Victorian reform within the context of FVIO contests hearings or interventions, Walklate's, Fitz-Gibbon's and McCulloch's (2018, p. 115) contention rings true; "more law is not [always] the answer to improving responses to intimate partner violence", and as such, the potential shortcomings of this reform need to be carefully contemplated.

More recently, the Republic of Ireland extended the provision of ILR to sexual assault victims where applications for the release of victims' counselling records are subpoenaed (see *Criminal Evidence Act 1992* (IRE) as amended by the *Criminal Justice (Sexual Offences) Act 2017* (IRE)). In Northern Ireland, similar calls for

¹ See section 4A of the *Criminal Law (Rape) Act 1981* (IRE), as inserted by Section 34 of the *Sex Offenders Act 2001* (IRE).

victim ILR were made to protect victims' sexual history and confidential communications following the Gillen Review into *The Law and Procedures in Serious Sexual Offences in Northern Ireland* (2019). Within Australia, ILR has also been available to sexual assault victims in New South Wales (NSW) since 2011 to prevent or restrict the disclosure of their sexual assault communications (s 299A *Criminal Procedure Act 1986* (NSW)). While further research is needed to evaluate the impact of this NSW reform, it is believed that this may make the process less harmful for victims (Braun, 2014).

The unintended consequences of recommendation 60

Although adversarial legal systems have not historically prioritised victim interests, some academics, such as Doak (2008, p. 147) suggest that while “a victim’s ‘right to counsel’ would sit very uncomfortably within the adversarial framework, it may, conceivably, not be so incompatible that it may not function at all”. However, even in light of the perceived benefits of granting victims limited participation rights within specialist family violence courts, concerns around integrating victims in legal proceedings remain. Such concerns include, for instance, the potential for a victim’s legal representative to unbalance the ‘equality of arms’ between the prosecution and accused (McAsey, 2011, p. 115). This may fuel the perception that there exists dual representation for the victim (Kirchengast, Iliadis & O’Connell, 2019, *forthcoming*). In light of this, and as explained by the VLRC (2016, p. 26), a significant challenge to introducing ILR for victims is striking a balance between maintaining the integrity of adversarial processes while simultaneously “reinforc[ing] the victim’s interest within this context”.

A second concern arises in the context of victims giving evidence in court and the potential role of ILR. It is well established that testifying as a witness, and being cross-examined, is especially challenging for victims of gender-based violence, including IPV, in that it often leaves victims, like witnesses more generally, feeling disbelieved, thus exacerbating their sense of vulnerability through the process (ALRC, 2010). Although protective measures are in place to reduce the severity of these impacts, such as restrictions on the sorts of questions that can be asked of victims, court processes continue to result in feelings of “state-sanctioned victimisation” (Van De Zandt, 1998, p. 125), with victims describing cross-examination as “humiliating” and “distressing” (VLRC, 2016, p. 93).

The potential for ILR to address these concerns has been flagged in various international commissions of inquiry, including in Ireland when initial proposals for ILR for sexual assault victims were put forward to the Irish Law Reform Commission (ILRC) in 1987. Initially, the ILRC (1987, p. 70) rejected this proposal due to a concern that legal representatives could be seen as ‘coaching’ victims by advising them on how to respond to questions. Three decades later, the VLRC (2016) similarly found that the potential for ‘coaching’ could distort the course of justice if victims were to be advised on how to downplay or highlight certain aspects of their evidence while testifying. Additionally, it maintained that ILR would not necessarily present a viable solution for supporting victims during cross-examination because they would be “less informed than the prosecution about the issues in the case” (VLRC, 2016, p. 120).

An arguably significant issue also arises when contemplating reform for victims of certain offences. As noted by the ILRC in 1987, “if representation of witnesses in

rape cases were allowed, it would be difficult to refuse it in other cases” (p. 69). The Australian Human Rights Commission (AHRC) similarly asserted that unless ILR were granted to all victims, it could leave some victims unrepresented, which in turn would produce further disparities, placing victims “in an even more hazardous position” (1977 cited in the ILRC 1987). The AHRC (1977 cited in the Law Reform Commission of Victoria, 1987) thus argued this would further exacerbate the problem of victims not reporting crime and could contribute to heightened attrition levels (see also ILRC, 1987). Sir John Gillen’s recent Northern Ireland review also recognised the dangers of granting ILR to a certain class of victims, which may be perceived as “unfair” when this right is not available to other vulnerable victims in need of support (Gillen Review, 2019, p. 172).

These issues similarly relate to questions surrounding the funding of ILR, which according to the Gillen Review (2019) would be difficult to predict. The VLRC (2016, p. 120) likewise notes that “resourcing equitable access [to ILR] is difficult to justify when victims are not a party to proceedings”. If ILR were granted to victims of IPV, means testing may need to be applied, such as is applicable to accused people applying for legal aid. This may consequently foster a perception that there exists a ‘hierarchy of victimisation’ (Carrabine et al., 2004).

Bearing these issues in mind, it will be important to monitor the impact of Recommendation 60, if implemented, and the potential for this reform to further complicate the legal process, which would be contrary to the justice needs of IPV victims. Additionally, while ILR may not necessarily imply an interjection in the legal process, it would need to be thoroughly contemplated across the different domains of legal practice that specialist family violence courts deal with in order to provide a

forum for “effective” victim participation and “alleviate some of the stress associated with testifying [and appearing] in court” (Doak, 2008, p. 147).

Conclusion

The RCFV symbolises a remarkable opportunity in Victoria to transform justice responses to IPV victims and improve victim perceptions of, and experiences within, criminal and civil legal processes. Acknowledging the continued impacts of justice processes on IPV victims, Recommendation 60 outlines the need for ILR for applicants in specialist family violence courts. In the absence of prescribed detail addressing how this recommendation should be brought to life, and reflecting the breadth of resistance accompanying this recommendation, we argue there is a pivotal need to pilot this reform in varying contexts.

As demonstrated throughout our analysis, we suggest that ILR may provide an avenue to address the difficulties victims experience during FVIO contests hearings, or during preliminary criminal hearings where a FVIO is breached and defence counsel seek to challenge a victim’s credibility. In these circumstances, the imposition of ILR may help to reduce victims’ feelings of re-traumatisation and their likely withdrawal from the court process. It may also help to strengthen the testimony of victims and evidence presented to court, which may in turn improve victims’ perceptions of the legal process.

Piloting and evaluating the impact of this component of the RCFV recommendation also affords the opportunity for other Australian state and territory jurisdictions, as well as comparable adversarial jurisdictions internationally, to learn from the Victorian experience. Given the recommendation has been made at a time when

numerous jurisdictions across Australia and worldwide are grappling with similar questions surrounding the adequacy of legal system responses to IPV, the potential to transfer knowledge and practice within and beyond Australia is particularly important and establishes the Victorian context as a useful case study for ILR for IPV victims.

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